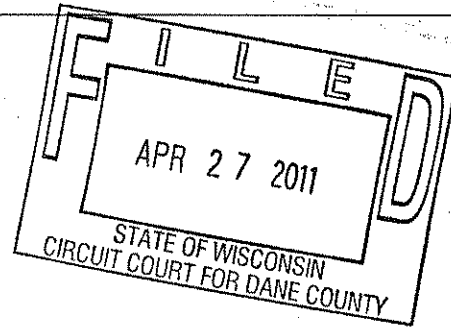


IN RE: PETITIONS TO
RECALL SENATORS DAN
KAPANKE, RANDY HOPPER,
LUTHER OLSEN, DAVE
HANSEN, SHEILA HARSDORF,
ALBERTA DARLING, JIM
HOLPERIN, and
ROBERT WIRCH,



Case No. 11-CV-1⁶⁰

Hon. John Markson

SENATOR DAN KAPANKE,
SENATOR RANDY HOPPER,
SENATOR LUTHER OLSEN,
SENATOR SHEILA HARSDORF,
SENATOR ALBERTA DARLING,
SENATOR DAVE HANSEN,
SENATOR JIM HOLPERIN,
SENATOR ROBERT WIRCH,

COMMITTEE TO RECALL KAPANKE,
COMMITTEE TO RECALL HOPPER,
COMMITTEE TO RECALL OLSEN,
COMMITTEE TO RECALL HARSDORF,
COMMITTEE TO RECALL DARLING,
RECALL DAVE HANSEN,
JIM HOLPERIN RECALL COMMITTEE,
TAXPAYERS TO RECALL ROBERT WIRCH, and

GOVERNMENT ACCOUNTABILITY
BOARD,

Interested Parties.

GOVERNMENT ACCOUNTABILITY BOARD'S NOTICE OF MOTION AND MOTION TO
REOPEN, TO ADD PARTIES, AND TO EXTEND DEADLINES FOR GOOD CAUSE
PURSUANT TO WIS. STAT. § 9.10(3)(b)

NOTICE OF MOTION

TO: ALL ABOVE-IDENTIFIED PARTIES
By counsel Via U.S. Mail and Email

The Wisconsin Government Accountability Board ("GAB"), by its undersigned counsel, will bring a motion for an order reopening Case No. 11-CV-1160, adding parties, and extending deadlines for good cause shown under Wis. Stat. § 9.10(3)(b). The motion will be heard at a date and time to be determined by the Court, at 215 South Hamilton Street, Madison, WI 53707.

MOTION

The GAB, by its undersigned counsel, hereby moves the Court to reopen Case No. 2011-CV-1660, to: (1) add the above-identified parties to the action, and (2) enter an order respecting the parties' deadlines relating to the recall petitions currently offered for filing with the GAB. The motion is supported by the following:

CURRENT RECALL PETITIONS OFFERED FOR FILING WITH GAB, AND COLLATERAL COURT FILINGS

(1) On April 1, 2011, a recall petition was offered for filing with GAB, seeking a recall election for Wisconsin's 32nd Senate District. Senator Dan Kapanke is the incumbent senator from the 32nd District and is the subject of the recall petition.

(2) On April 7, 2011, a recall petition was offered for filing with GAB, seeking a recall election for Wisconsin's 18th Senate District. Senator Randy Hopper is the incumbent senator from the 18th District and is the subject of the recall petition.

(3) On April 18, 2011, a recall petition was offered for filing with GAB, seeking a recall election for Wisconsin's 14th Senate District. Senator Luther Olsen is the incumbent senator from the 14th District and is the subject of the recall petition.

(4) On April 19, 2011, a recall petition was offered for filing with GAB, seeking a recall election for Wisconsin's 10th Senate District. Senator Sheila Harsdorf is the incumbent senator for the 10th District and is the subject of the recall petition.

(5) On April 21, 2011, a recall petition was offered for filing with GAB, seeking a recall election for Wisconsin's 30th Senate District. Senator Dave Hansen is the incumbent senator for the 30th District and is the subject of the recall petition.

(6) On April 21, 2011, a recall petition was offered for filing with GAB, seeking a recall election for Wisconsin's 8th Senate District. Senator Alberta Darling is the incumbent senator for the 8th District and is the subject of the recall petition.

(7) On April 21, 2011, a recall petition was offered for filing with GAB, seeking a recall election for Wisconsin's 22nd Senate District. Senator Robert Wirth is the incumbent senator for the 22nd District and is the subject of the recall petition.

(8) On April 21, 2011, a recall petition was offered for filing with GAB, seeking a recall election for Wisconsin's 12th Senate District. Senator Jim Holperin is the incumbent senator for the 12th District and is the subject of the recall petition.

(9) On April 8, 2011, the Circuit Court for Dane County, the Honorable John Markson presiding, granted an extension to April 15, 2011, to Senator Kapanke to file any challenge to the recall petitions offered for filing on April 1, 2011. At the same time, the Court granted an extension to April 22, 2011, to the Committee to Recall Kapanke to file any rebuttal to any challenge filed by Senator Kapanke.

(10) On April 15, 2011, Senator Kapanke filed a challenge to the recall petitions filed on April 1, 2011.

(11) On April 19, 2011, the Committee to Recall Kapanke filed a rebuttal to Senator Kapanke's challenge.

(12) On April 21, 2011, Senator Kapanke filed a reply to the Committee to Recall Kapanke's rebuttal.

(13) On April 21, 2011, Senator Hopper filed a challenge to the recall petitions filed on April 7, 2011.

(14) On April 26, 2011, the Committee to Recall Hopper filed a rebuttal to Senator Hopper's challenge.

LEGAL FRAMEWORK

(15) Under the relevant statute, the incumbent senators, and the committees offering petitions for filing, have 10 calendar days to submit challenges to the recall petitions offered for filing. The recall committees each have 5 calendar days from the date the challenge is filed, to file any rebuttal. The senators then have 2 calendar days from the date of filing of a rebuttal, to file any reply. See Wis. Stat. § 9.10(3)(b).

(16) GAB has 31 days to complete its "careful examination" of each recall petition offered for filing, and to file a certificate indicating whether the petition is sufficient or insufficient. See Wis. Stat. § 9.10(3)(b).

(17) This court has authority under Wis. Stat. § 9.10(3)(b) to enlarge GAB's 31-day period of time "upon showing of good cause."

GOOD CAUSE EXISTS TO EXTEND PENDING DEADLINES UNDER WIS. STAT. § 9.10(3)(b)

(18) Good cause exists to extend the 31-day periods for completing the careful examination of the petitions and filing the certificates regarding sufficiency of the petitions. Such good cause includes:

(a) There are now 8 petitions offered for filing. GAB is aware of no time when so many recall petitions were pending simultaneously. Recall elections in Wisconsin are very rare, and to have 8 petitions pending at the same time is extraordinary. In addition, this number of simultaneous recalls has never occurred anywhere in the United States.

(b) On April 20, 2010, the campaign of JoAnne Kloppenberg, candidate for Justice of the Wisconsin Supreme Court, requested a statewide recount of the April 5, 2011, election results in that race. GAB is in charge of that process. The recount process commenced on April 27, 2011, and will continue through May 9, 2011. GAB staff will be on-call all day throughout that period to assist county officials in conducting the recount. Given the extraordinarily close margin in the unofficial election results for April 5, GAB has been preparing for the possibility of a statewide recount since that date. This effort has drawn resources away from the agency's necessary work on the recall petitions, and is expected to continue to have that effect. Now that the recount process has started, it will continue to tax the resources of the GAB staff, including during the time when statutory deadlines regarding the recall petitions are scheduled to fall.

(c) Each of the recall petitions offered for filing contain significantly more signatures than are required to obtain a recall election, and in any case the numbers required are themselves substantial since these are senatorial districts. GAB therefore has an unusually large task in reviewing each of the petitions for

sufficiency. A detailed description of the work GAB must do on each recall petition will be provided to the Court in an affidavit to be filed separately.

(d) In addition to reviewing the petitions, GAB staff must review the challenges, rebuttals, and replies filed by the parties, and prepare the GAB members for the meeting at which the petitions are to be considered. With respect to several of the pending petitions, the current statutory deadlines that GAB faces, if not extended by the Court, would require GAB staff to produce these meeting materials within only a few days, and would then give GAB members only a day or two to review and consider them before holding a hearing at a meeting of the GAB.

GAB'S REQUEST TO THE COURT

(19) The GAB has worked out a proposed schedule for all the pending recall petitions, to extend deadlines in such a way as to permit the parties to the process (the incumbents and the committees) to have adequate time to prepare any challenges, rebuttals, and replies to the petitions, and to give GAB staff and the GAB members enough time to properly, reasonably and fully consider the petitions and the issues raised in the challenges.

(20) The proposed schedule is set forth on the following page in the form of a chart. GAB's request to the Court is that it extend the deadlines to the dates that are indicated in the chart. The proposal essentially involves three major elements: to count all dates for the challenges and challenge-related filings as business days rather than calendar days; to convene a GAB meeting on May 23, 2011, at which the Kapanke, Hopper and Olsen petitions would be considered, with filing of certificates of sufficiency or insufficiency on May 31, 2011, or no later than June 3, 2011; and a meeting of the GAB on May 31, 2011, at which the Harsdorf, Hansen,

Darling, Wirch and Holperin petitions would be considered, with the filing of certificates for those petitions the same day, May 31, 2011, or no later than June 3, 2011.

[chart follows on next two pages]

| Senator Name | Petition Offered for Filing | Challenge Due | Rebuttal Due | Reply Due | GAB Meeting | Cert. Dates |
|--------------|-----------------------------|-------------------------------|-------------------------------|--|-------------|---------------------------------|
| Kapanke | April 1 | April 15 (per court order) | April 22 (per court order) | April 21 (b/c rebuttal was filed early on April 19) | May 23 | May 31 – June 3 ¹ |
| Hopper | April 7 | April 21 (per court order) | April 28 (per court order) | May 2 (per court order) | May 23 | May 31 – June 3 |
| Olsen | April 18 | May 2 | May 9 | May 11 | May 23 | May 31 – June 3 |
| Harsdorf | April 19 | May 3 | May 10 | May 12 | May 31 | May 31 – June 3 |
| Hansen | April 21 | May 5 | May 12 | May 16 | May 31 | May 31 – June 3 |
| Darling | April 21 | May 5 | May 12 | May 16 | May 31 | May 31 – June 3 |

¹ Under the terms of Wis. Stat. § 9.10(3)(b), petitions certified as sufficient or insufficient between May 31, 2011 and no later than June 3, 2011 result in the calling of a recall election to occur on July 12, 2011.

| | | | | | | |
|----------|----------|-------|--------|--------|--------|--------------------|
| Wurch | April 21 | May 5 | May 12 | May 16 | May 31 | May 31 – June 3 |
| Holperin | April 21 | May 5 | May 12 | May 16 | May 31 | May 31 – June 3 |

(21) GAB has discussed its proposal with counsel for all the parties identified in the above caption. Although there was agreement as to certain aspects of the proposal, there was not agreement as to all of it. Therefore, GAB believes that a hearing will be necessary to resolve the issues.

(22) GAB's current statutory deadline to file its certificate of sufficiency or insufficiency as to the Kapanke petition is May 2, 2011. Therefore, GAB respectfully requests that the Court schedule a hearing as soon as practicable to consider the merits of the motion.

(23) GAB may submit an affidavit to the Court separately, prior to hearing, in further support of this motion.

WHEREFORE, the Wisconsin Government Accountability Board requests that this Court enter an order extending all pending deadlines regarding the recall petitions for Senators Kapanke, Hopper, Olsen, Harsdorf, Hansen, Darling, Wirch and Holperin as described in the preceding motion.

Dated this 27th day of April 2011.

J.B. VAN HOLLEN
Attorney General

A handwritten signature in black ink, appearing to read "Lewis Beilin", with a long horizontal stroke extending to the right.

LEWIS W. BEILIN
Assistant Attorney General

Attorneys for Government
Accountability Board

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-3076
(608) 267-2223 (Fax)
beilinlw@doj.state.wi.us